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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GLOBAL APOGEE,  
Plaintiff,  
v.  
SUGARFINA, INC., et. al.,  
Defendants.

CV 18-5162-RSWL-Ex

**ORDER re: Individual  
Defendants' Motion to  
Dismiss, or in the  
Alternative, Motion to  
Strike Plaintiff's Second  
Amended Complaint [60]**

Plaintiff Global Apogee ("Plaintiff") filed this Action [1] on June 11, 2018 against Defendants Sugarfina, Inc. ("Sugarfina"), Joshua Resnick, and Rosie O'Neill alleging trademark infringement among other related claims. The Action arises out of Defendants' purported unauthorized use of Plaintiff's federally registered CANDY-GRAM service mark.

Before this Court is a Motion to Strike, or in the alternative, Motion to Dismiss Plaintiff's Second

1 Amended Complaint [60] filed by Defendants Joshua  
2 Resnick and Rosie O'Neill ("Individual Defendants").  
3 For the following reasons, this Court **DENIES as moot**  
4 Individual Defendants' Motion to Strike and **DENIES** the  
5 Motion to Dismiss.

### 6 I. BACKGROUND

7 Plaintiff alleges that Sugarfina infringed on its  
8 federally registered CANDY-GRAM trademark. Plaintiff's  
9 Second Amended Compl. ("SAC") ¶ 32, ECF No. 57.

10 Plaintiff further alleges that Individual Defendants,  
11 who serve as co-founders and co-CEOs of Sugarfina, were  
12 personally and directly involved in each of the  
13 decisions regarding the infringing uses of the CANDY-  
14 GRAM name by controlling and directing Sugarfina's  
15 activities through its executives, representatives, and  
16 agents.<sup>1</sup> SAC ¶ 32.

17 Plaintiff filed its Complaint [1] against Sugarfina  
18 and Individual Defendants on June 11, 2018, asserting  
19 claims related to Defendants' allegedly unauthorized use  
20 and infringement of Plaintiff's federally registered

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21  
22 <sup>1</sup> As support, Plaintiff points to a December 22, 2017  
23 interview where Defendant O'Neill described her typical workday,  
24 which included tasks such as: leading team meetings, reviewing  
25 new store designs, creating marketing campaigns for product  
26 launches, and coming up with product concepts for brand  
27 collaborations. Id. ¶ 33. Defendant O'Neill also described the  
28 division of labor between the Individual Defendants in her  
interview: Defendant Resnick handles the "back-of-house"  
operations, finance, human resources, and business development;  
and Defendant O'Neill manages the "front-of-house," which  
includes "everything that is visible to [their] customers." Id.  
Defendant O'Neill admitted in her interview that she "still does  
a lot of the design work [her]self" even after hiring personnel.  
Id.

1 CANDY-GRAM trademark and its common law rights to the  
2 CANDY-GRAM service mark.

3 On October 10, 2018, the Court granted in part [15]  
4 Sugarfina's Motion to Dismiss [9] with twenty-one days'  
5 leave to amend. On October 18, 2018, the Court entered  
6 Plaintiff and Sugarfina's Joint Stipulation [16], which,  
7 among other things, extended Plaintiff's deadline to  
8 file an amended complaint to November 1, 2018.

9 On November 1, 2018, Plaintiff filed its First  
10 Amended Complaint ("FAC") [18], alleging five causes of  
11 action: (1) federal trademark infringement in violation  
12 of Section 32 of the Lanham Act, 15 U.S.C. § 1114; (2)  
13 California common law unfair competition; (3) unfair  
14 competition in violation of California Business and  
15 Professions Code § 17200; (4) common law infringement of  
16 trademark; and (5) common law infringement of service  
17 mark. On November 21, 2018, Sugarfina filed its Answer  
18 and Counterclaims against Plaintiff [20].

19 Sugarfina filed a Notice of Filing Bankruptcy on  
20 September 16, 2019 [37]. On April 14, 2020, the Court  
21 stayed this Action [42] pending the Confirmation Hearing  
22 in Sugarfina's bankruptcy proceedings. On May 13, 2020,  
23 the U.S. Bankruptcy Court for the District of Delaware  
24 entered an order confirming Sugarfina's Plan of  
25 Reorganization, which became effective May 28, 2020.  
26 See Update re: Status and Result of Bankruptcy Ct. Hr'g,  
27 ECF No. 43; Supp. Notice re: Status and Result of  
28 Bankruptcy Ct. Hr'g, ECF No. 44.

1 On September 8, 2020, the Court granted [48]  
2 Sugarfina's unopposed Motion to Enforce Plan Injunction  
3 and Release Provisions [45], ordering Plaintiff to  
4 dismiss its claims against Sugarfina and staying the  
5 Action against Individual Defendants through May 28,  
6 2021. On June 15, 2021, the Court dismissed Sugarfina  
7 and Sugarfina's Counterclaims against Plaintiff without  
8 prejudice [55].

9 Individual Defendants filed a Motion to Dismiss  
10 Plaintiff's First Amended Complaint [56] on June 18,  
11 2021.<sup>2</sup> Plaintiff filed a Second Amended Complaint  
12 ("SAC") [57] and Opposition [58] on June 29, 2021, and  
13 Individual Defendants filed their Reply [59] on July 6,  
14 2021. On July 23, 2021, this Court denied [63]  
15 Individual Defendants' Motion as moot and deemed the  
16 Plaintiff's SAC the operative complaint in this Action.

17 Individual Defendants filed the instant Motion to  
18 Dismiss, or in the Alternative, Motion to Strike  
19 Plaintiff's SAC [60] on July 13, 2021. Plaintiff  
20 opposed [62] the Motion on July 20, 2021, and Individual  
21 Defendants replied [64] on July 27, 2021.

22 ///

23 \_\_\_\_\_  
24 <sup>2</sup> Pursuant to the Court's April 14, 2020 Order, Individual  
25 Defendants accepted service of the summons and complaint  
26 effective as of the date the Court lifted the stay, with their  
27 response deadlines set for twenty-one days thereafter. See Order  
28 Granting Joint Stipulation to Continue Trial Date and Pretrial  
Dates ¶ 4, ECF No. 42. The Action was stayed against Individual  
Defendants through May 28, 2021, and accordingly their deadline  
to respond was June 18, 2021.

## II. DISCUSSION

### A. Motion to Strike Plaintiff's SAC

Individual Defendants' Motion to Strike the SAC for being improperly filed is denied as moot because the issue has already been addressed. On July 23, 2021, this Court denied Individual Defendants' Motion to Dismiss the FAC [56] and deemed the SAC the operative Complaint in this Action. See generally Order re: Individual Defs.' Mot. to Dismiss FAC ("Order"), ECF No. 63.<sup>3</sup> Consequently, the Court need not consider either party's arguments as to whether the SAC was properly filed under Rules 15 and 16.

### B. Motion to Dismiss Plaintiff's SAC

Federal Rule of Civil Procedure ("Rule") 12(b)(6) allows a party to move for dismissal on one or more claims if a pleading fails to state a claim upon which relief can be granted. Under Rule 8(a), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" to give the defendant "fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); see also Fed. R. Civ. P. 8(a). Dismissal is proper "where the complaint lacks a cognizable legal theory or sufficient facts to

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<sup>3</sup> Individual Defendants' instant Motion offers the same "procedurally defective" argument that was already analyzed and rejected in the Order [63]. As the Court noted there, requiring Plaintiff to file a formal motion and refile the SAC would make "little practical sense and waste resources." Order 11:19-21.

1 support a cognizable legal theory.” Mendiondo v.  
2 Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir.  
3 2008) (citing Balistreri v. Pacifica Police Dep’t, 901  
4 F.2d 696, 699 (9th Cir. 1988)).

5 “To survive a motion to dismiss, a complaint must  
6 contain sufficient factual matter, accepted as true, to  
7 ‘state a claim to relief that is plausible on its  
8 face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)  
9 (quoting Twombly, 550 U.S. at 570). While a complaint  
10 need not contain detailed factual allegations, it must  
11 provide more than “labels and conclusions” or “a  
12 formulaic recitation of the elements of a cause of  
13 action.” Twombly, 550 U.S. at 555. The plaintiff must  
14 allege enough facts “to raise a right to relief above  
15 the speculative level.” Id. In evaluating a Rule  
16 12(b)(6) motion, a court must take all well-pleaded  
17 allegations of material fact as true and construe them  
18 in the light most favorable to the nonmovant. Great  
19 Minds v. Off. Depot, Inc., 945 F.3d 1106, 1109 (9th Cir.  
20 2019). A court may generally consider only “the  
21 complaint itself and its attached exhibits, documents  
22 incorporated by reference, and matters properly subject  
23 to judicial notice.” In re NVIDIA Corp. Sec. Litig.,  
24 768 F.3d 1046, 1051 (9th Cir. 2014).

25 As a threshold matter, Plaintiff contends that  
26 Individual Defendants waived the right to move to  
27 dismiss, pursuant to Rule 12(g)(2), by failing to timely  
28 bring a Rule 12(b)(6) motion against the Original

1 Complaint. Mot. 11:8-9. The Court disagrees.

2 As the Court previously addressed in the Order, the  
3 parties had stipulated that Individual Defendants only  
4 accepted service as of May 28, 2021. See Order 6:8-27  
5 (referencing the parties' Joint Stipulation [40] entered  
6 on April 9, 2020). The Court gave Individual Defendants  
7 twenty-one days to respond from that date, and  
8 Individual Defendants timely filed a Motion to Dismiss  
9 FAC [56] on June 18, 2021. Moreover, Individual  
10 Defendants have not waived their right to bring this  
11 Motion because defendants do not have to respond to a  
12 pleading until they have been properly served. Fed. R.  
13 Civ. P. 12(a)(1)(A). Therefore, Individual Defendants'  
14 Motion to Dismiss ("Motion") is procedurally proper.

15 Individual Defendants move to dismiss the SAC with  
16 prejudice for two reasons: (1) the SAC fails to state a  
17 claim against Defendants as required by Rule 12(b)(6);  
18 and (2) amendment would be futile because the only facts  
19 that can be offered are in the SAC, and they are plainly  
20 insufficient. See generally Mot. Individual Defendants  
21 move to dismiss all of Plaintiff's claims: (1) federal  
22 trademark infringement in violation of Section 32 of the  
23 Lanham Act, 15 U.S.C. § 1114; (2) California common law  
24 unfair competition; (3) unfair competition in violation  
25 of California Business and Professional Code § 17200;  
26 (4) common law infringement of trademark; and (5) common  
27 law infringement of service mark. Mot. 7:3-8; see  
28 generally SAC.

1                   1. *Individual Liability for Federal*  
2                   *Trademark Infringement*

3           Individual Defendants move to dismiss Plaintiff's  
4 first cause of action for failure to state a claim upon  
5 which relief may be granted. First, Individual  
6 Defendants argue that it is not sufficient to plead  
7 trademark infringement against the officers and  
8 directors of an allegedly infringing corporation based  
9 solely upon [their] status as officers and directors.  
10 Mot. 1:19-24.

11           Corporate officers and directors that personally  
12 authorize, direct, or are otherwise directly involved in  
13 a company's infringing conduct may be individually  
14 liable for the company's trademark infringement. Comm.  
15 for Idaho's High Desert, Inc. v. Yost, 92 F.3d 814, 823  
16 (9th Cir. 1996); see also Transgo, Inc. v. Ajac  
17 Transmission Parts Corp., 768 F.2d 1001, 1021 (9th Cir.  
18 1985) ("The officer must personally take part in  
19 infringing activities or specifically direct employees  
20 to do so.").

21           Corporate officers are "personally liable for a  
22 corporation's trademark infringements when they are a  
23 'moving, active conscious force' behind the  
24 corporation's infringement." Talent Mobile Dev., Inc.  
25 v. Headios Grp., 382 F. Supp. 3d 953 (C.D. Cal. 2019)  
26 (quoting Daimler AG v. A-Z Wheels LLC, 334 F. Supp. 3d  
27 1087, 1006 (S.D. Cal. 2018)). Showing that the  
28 individual generally controls the company's business



1 affairs is insufficient to allege personal liability.  
2 See, e.g., 19 Tao Vega LLC v. Holo Ltd., No. C 19-5640  
3 SBA, 2019 WL 8263434, at \*4 (N.D. Cal. 2019) (requiring  
4 that the officer personally participate in the  
5 infringement); Facebook, Inc. v. Power Ventures, Inc.,  
6 844 F.3d 1058, 1069 (9th Cir. 2016) ("Cases finding  
7 'personal liability on the part of corporate officers  
8 have typically involved instances where the defendant  
9 was the "guiding spirit" behind the wrongful conduct, or  
10 the "central figure" in the challenged corporate  
11 activity.'").

12 As a threshold matter, Individual Defendants  
13 incorrectly relied on authority from Lauter and Deckers  
14 in their Motion and Reply. The courts in Lauter and  
15 Deckers analyzed individual liability under an alter ego  
16 theory, which requires a higher pleading standard.<sup>4</sup> See  
17 generally Lauter v. Rosenblatt, No. CV 15-08481, 2017 WL  
18 6205784 (C.D. Cal. 2017) (dismissing plaintiffs' claims  
19 because they could not allege enough facts to satisfy  
20 the elements of an alter ego theory); Deckers Outdoor  
21 Corp. v. Bright Trading Corp., No. CV14-00198, 2014 WL  
22 12564124 (C.D. Cal. 2014) (same). By contrast, while  
23

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24 <sup>4</sup> "The alter ego doctrine arises when a plaintiff [claims]  
25 that an opposing party is using the corporate form unjustly and  
26 in derogation of the plaintiff's interests. In certain  
27 circumstances the court will disregard the corporate entity and  
28 will hold the individual shareholders liable for the actions of  
the corporation." Lauter v. Rosenblatt, No. CV 15-08481, 2017 WL  
6205784, at \*7 (citing Nielson v. Union Bank of Cal., 290 F.  
Supp. 2d 1101, 1115 (C.D. Cal. 2003)).

1 personal liability for trademark infringement is also at  
2 issue here, there is no allegation that Individual  
3 Defendants, in their capacities as officers, acted as  
4 "alter egos" to Sugarfina. Therefore, the standard  
5 under Lauter and Deckers does not apply to support  
6 Individual Defendants' arguments.

7 Although the two theories are similar, there is a  
8 significant difference: proving liability under the  
9 alter ego doctrine requires a showing that the  
10 individual pierced the corporate veil, which is not  
11 necessary when proving liability to hold corporate  
12 officers personally liable for a corporation's trademark  
13 infringements. Compare Babbit Elecs., Inc. v. Dynascan  
14 Corp., 38 F.3d 1161, 1184 (11th Cir. 1994) ("[A]  
15 corporate officer who directs, controls, ratifies,  
16 participates in, or is the moving force behind the  
17 infringing activity, is personally liable for such  
18 infringement *without regard to piercing of the corporate*  
19 *veil.*") (emphasis added), with Nielson v. Union Bank of  
20 Cal., 290 F. Supp. 2d 1101, 1115 (C.D. Cal. 2003) ("The  
21 alter ego doctrine arises when a plaintiff [alleges]  
22 that an opposing party is using the corporate form  
23 unjustly . . . [sometimes] the court will disregard the  
24 corporate entity and will hold the individual  
25 shareholders liable for the actions of the  
26 corporation."). Consequently, Defendants' comparisons  
27 to cases using the alter ego standard are unpersuasive.

28 Individual Defendants rely on Apple Hill Growers,

1 where a court dismissed a plaintiff's complaint because  
2 it merely included a "conclusory statement that  
3 Defendants . . . undert[ook] to control and direct the  
4 infringing activities of [their company] by virtue of  
5 their roles as corporate officers and owners." Apple  
6 Hill Growers v. El Dorado Orchards, No. 2:17-cv-02085-  
7 TLN-CKD, 2019 WL 5827365, at \*3 (E.D. Cal. 2019) (holding  
8 that defendants' personal involvement in the purported  
9 trademark infringement was insufficiently alleged).  
10 There, the plaintiff contended that it was "reasonable  
11 to infer" that defendants, simply by virtue of their  
12 roles, controlled and directed their company's allegedly  
13 infringing activities with no additional facts about any  
14 specific actions taken. Id. Although Apple Hill  
15 Growers discusses the relevant standard for officer  
16 liability, it is nevertheless distinguishable on the  
17 facts.

18 Here, Plaintiff does not merely rely on Individual  
19 Defendants' roles as corporate officers of Sugarfina in  
20 alleging their liability for trademark infringement. In  
21 its SAC, Plaintiff alleges that Individual Defendants  
22 took specific actions related to trademark infringement:

23 Defendants personally assisted in the development  
24 of every aspect of Sugarfina . . . Defendant  
25 O'Neill stated [in an interview] that 'her typical  
26 workday [is filled] with [team meetings].'  
27 [Defendant O'Neill] also stated that . . . she  
28 'still does a lot of the design work herself . . .  
[she] handle[s] . . . product, packaging, branding,  
marketing, sales, retail stores and the website.

1 [Individual Defendant] Resnick handles operations,  
2 finance, human resources, business development and  
3 legal.' Defendants also had control of . . . and  
appointed personnel to run Sugarfina.<sup>5</sup>

4 SAC at 13:16-14:10.

5 Unlike the plaintiff in Apple Hill Growers, here,  
6 Plaintiff offers sufficient facts to support Individual  
7 Defendants' personal involvement in the alleged  
8 infringement without relying solely on their roles as  
9 co-CEOs of Sugarfina. Plaintiff points to Defendant  
10 O'Neill's detailed statements regarding her and  
11 Defendant Resnick's involvement in the daily activities  
12 and decision-making of Sugarfina; for example, it may be  
13 reasonably inferred from Defendant O'Neill's purported  
14 control over Sugarfina's website, product design, and  
15 retail stores that she was personally involved in the  
16 alleged infringing conduct of Sugarfina. See SAC ¶¶ 24-  
17 26 (describing Sugarfina's advertisement of the "CANDY-  
18 GRAM" trade name as a product on its website and on  
19 retail store kiosks).

20 Because Individual Defendants allegedly hired  
21 personnel, participated in team meetings with personnel,  
22 and continue to handle design work or manage daily  
23 operations, it is plausible that the Individual

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24 <sup>5</sup> Plaintiff cited direct quotes from Individual Defendant  
25 O'Neill's interview with Forbes magazine. Elena Lyn Gross, How  
26 Sugarfina's Founders Built A Million-Dollar (And Very  
27 Instagrammable) Candy Company, FORBES (Dec. 22, 2017),  
28 [https://www.forbes.com/sites/elanagross/2017/12/22/how-](https://www.forbes.com/sites/elanagross/2017/12/22/how-sugarfinas-founders-built-a-million-dollar-and-very-instagrammable-candy-boutique/?sh=314f244d457a)  
[sugarfinas-founders-built-a-million-dollar-and-very-](https://www.forbes.com/sites/elanagross/2017/12/22/how-sugarfinas-founders-built-a-million-dollar-and-very-instagrammable-candy-boutique/?sh=314f244d457a)  
[instagrammable-candy-boutique/?sh=314f244d457a](https://www.forbes.com/sites/elanagross/2017/12/22/how-sugarfinas-founders-built-a-million-dollar-and-very-instagrammable-candy-boutique/?sh=314f244d457a).

1 Defendants could have been the "guiding spirits" behind  
2 the allegedly infringing conduct, either by personally  
3 taking part in it or directing their employees to do so.  
4 The SAC alleges specified roles that go beyond asserting  
5 that Individual Defendants only had general control over  
6 Sugarfina, and it is therefore sufficient to survive a  
7 motion to dismiss. Cf. Bravado Int'l Grp. Merch.  
8 Servs., Inc. v. Gearlaunch, Inc., No. CV-16-8657-MWF  
9 (CWx), 2018 WL 6074553, at \*1-2 (C.D. Cal May 1, 2018)  
10 (denying motion to dismiss trademark infringement claims  
11 where plaintiff alleged that defendants were in charge  
12 of inspecting products and printing operations, publicly  
13 commented on lawsuits on behalf of the company, and  
14 oversaw infringement procedures yet failed to take  
15 action against alleged infringement).

16 Furthermore, Individual Defendants' argument  
17 (relying on the outcome of Transgo) that Plaintiff is  
18 not sufficiently specific about Individual Defendants'  
19 particular roles in the infringement is refuted by the  
20 Bravado court:

21 [T]he Court notes that both *Townsley* and  
22 *Transgo* were decided on full evidentiary  
23 records, not motions to dismiss. Therefore,  
24 the courts in those cases were able to point to  
25 specific pieces of evidence that supported  
26 personal liability. At this stage of the  
27 proceedings, although it may be a "close" call  
28 . . . Plaintiffs have alleged enough to  
withstand a motion to dismiss. As discussed at  
the hearing, discovery will reveal the true  
extent of [Defendant]'s role in the allegedly

1           infringing conduct.

2       Id. at \*4. Here, Plaintiff has alleged enough to  
3 withstand a motion to dismiss, and the details behind  
4 Individual Defendants' specified roles may be revealed  
5 through discovery.

6       In sum, given that the facts have risen above a  
7 speculative level, the SAC's first cause of action  
8 survives dismissal.

9                               2. *California Common Law Unfair*  
10                              *Competition, Common Law Trademark*  
11                              *Infringement, and Common Law Service Mark*  
12                              *Infringement*

13       Plaintiff has sufficiently alleged trademark  
14 infringement under the Lanham Act; consequently,  
15 Plaintiff has also sufficiently alleged its second claim  
16 for California common law unfair competition, fourth  
17 claim for common law trademark infringement, and fifth  
18 claim for common law service mark infringement.

19       "[F]ederal and state laws regarding trademarks and  
20 related claims of unfair competition are substantially  
21 congruent." Int'l Order of Job's Daughters v. Lindeburg  
22 & Co., 633 F.2d 912, 916 (9th Cir. 1980); see also Grey  
23 v. Campbell Soup Co., 650 F. Supp. 1166, 1173 (C.D. Cal.  
24 1986) ("[T]he tests for infringement of a federally  
25 registered mark under § 32(1), 15 U.S.C. § 1114(1),  
26 infringement of a common law trademark, unfair  
27 competition under § 43(a), 15 U.S.C. § 1125(a), and  
28

1 common law unfair competition involving trademarks are  
2 the same." ). Because these claims are congruent with  
3 trademark infringement, they are not dismissed.

4 3. *Unfair Competition in Violation of*  
5 *California Business and Professional Code §*  
6 *17200*

7 Individual Defendants assert that Plaintiff's third  
8 cause of action for violation of California's UCL Unfair  
9 Competition Law ("UCL") should also be dismissed under  
10 Rule 12(b)(6). Mot. 10:20-23. Individual Defendants  
11 offer two reasons: (1) Plaintiff fails to plead any  
12 sufficient facts with reasonable particularity for  
13 alleged unlawful, unfair, or fraudulent conduct in  
14 violation of the UCL; and (2) because Plaintiff's  
15 substantive causes of action fail, Plaintiff's UCL claim  
16 based upon those causes of action must fail as well.  
17 See Mot. 11:19-23, 12:1-11. Both are unavailing.

18 The UCL imposes liability for an "unlawful, unfair  
19 or fraudulent business act or practice . . . ." Cal.  
20 Bus. & Prof. Code § 17200. An action for unfair  
21 competition under the UCL is "substantially congruent"  
22 to a trademark infringement claim under the Lanham Act.  
23 Acad. of Motion Picture Arts & Scis. v. Creative House  
24 Promotions, Inc., 944 F.2d 1446, 1457 (9th Cir. 1991).  
25 "Under both [the UCL and the Lanham Act], the 'ultimate  
26 test' is 'whether the public is likely to be deceived or  
27 confused by the similarity of the marks.'" Id.  
28 (citations omitted).

1 Plaintiff has alleged a UCL violation based on the  
2 same elements required for its trademark infringement  
3 claim. See SAC ¶¶ 65, 67 ("Defendants' unfair  
4 competition includes . . . representing in advertising  
5 and marketing materials . . . that CANDY-GRAM is owned  
6 or controlled by Defendants, *causing confusion among*  
7 *dealers and consumers* . . . [this conduct] constitutes  
8 unlawful, unfair, and fraudulent business practices in  
9 violation of Cal. Bus. & Prof. Code § 17200.").  
10 (emphasis added). Because Plaintiff's other substantive  
11 claims survive dismissal, Plaintiff's UCL claim based  
12 upon those causes of action similarly survives  
13 dismissal.

### 14 III. CONCLUSION

15 Based on the foregoing, the Court **DENIES as moot**  
16 Individual Defendants' Motion to Strike and **DENIES** the  
17 Motion to Dismiss.

18 **IT IS SO ORDERED.**

19  
20 DATED: October 15, 2021

/s/ Ronald S.W. Lew

21 **HONORABLE RONALD S.W. LEW**  
22 Senior U.S. District Judge  
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